Editor's note: 83 I.D. 617

MANLEY RUSTIN AND BETTY RUSTIN

IBLA 76-667 Decided December 6, 1976

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting Color of Title application I-12035.

Affirmed.

1. Color or Claim of Title: Generally--State Laws

Possession of federal land for the period of a state's statute of limitations, which may create title rights in an adverse possessor to nonfederal land, cannot affect the title of land belonging to the United States. Where there is no other acceptable basis for a belief that a claimant has title other than mere adverse possession under such a state law, there is no claim or color

of title recognizable under the Color of Title Act, 43 U.S.C. § 1068 (1970).

2. Color or Claim of Title: Generally

A claim under the the Color of Title Act, 43 U.S.C. § 1068 (1970), must be based upon a deed or other document which on its face purports to convey the applicant the land applied for.

APPEARANCES: Ted C. Springer, Esq., Challis, Idaho, for the appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

By a decision dated May 24, 1976, the Idaho State Office, Bureau of Land Management (BLM), rejected appellants' application under the Color of Title Act, 43 U.S.C. § 1068 (1970). Appellants rest their claim solely upon an allegation of good faith adverse possession with attendant improvements and cultivation. Appellants' application, submitted on BLM Form 42-R1457, states that basis for their claim lies in the fact that,

To the best of claimants' knowledge, parcel claimed was enclosed by fence by patentee of contiguous land south of parcel in 1903, cultivated

> by irrigation, possessed, occupied, fenced and used since patent by patentee and his successors in interest including claimant, to the exclusion of others, until eviction by Bureau of Land Management in 1974-1975.

The application was accompanied by a copy of BLM Form 2540-2 titled "Conveyances Affecting Color or Claim of Title." That form, completed by the Custer County Recorder, stated "no conveyances of record affecting above parcel-title vested in USA."

Appellants have not produced any instrument or deed which purports to vest them with any title to the parcel. All that appellants have shown, at most, is that they, along with their predecessors in interest, have fenced and cultivated the parcel for a period of years. Appellants argue, however, that the rule of property in the State of Idaho is that a person may acquire title to real property by claim of title not based upon a written instrument and they contend that this rule should be applied in this case.

[1] While it is correct, as appellants point out, that the federal courts usually apply the law of the state where real property is located in determining questions affecting local land titles, the case before us does not present a routine title dispute which a federal court would decide "precisely as the state courts ought to do." 1/ Indeed, this case involves a claim which the state

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1/ Appellant's Memorandum, p. 2.

courts are powerless to consider. It has long been recognized that possession of federal land for the period of a state's statute of limitations, which could give rise to title rights in an adverse possessor of non-federal land, cannot affect the title of the United States. E.g., United States v. California, 332 U.S. 19 (1947); United States v. Gossett, 416 F.2d 565 (9th Cir. 1969). The Color of Title Act under which appellants seek a conveyance contemplates the use of uniform federal standards to determine claims, and special state rules are thus not applicable. Under the Color of Title Act there must be a claim or color of title. Mere adverse possession alone under state law has never been considered a claim of title under the Act, because there is no basis for any belief that a claimant can acquire title against the United States under a state statute of limitations. Cf. Beaver v. United States, 350 F.2d 4 (9th Cir. 1965), cert. denied., 383 U.S. 937 (1966), and see cases cited, infra.

[2] We have repeatedly held that a valid Color of Title claim cannot be made by one who does not establish that the land in issue was conveyed to him by an instrument which, on its face, purported to convey the tract in question. E.g., Mildred A. Powers, 27 IBLA 213 (1976); Cloyd and Velma Mitchell, 22 IBLA 299 (1975); James E. Smith, 13 IBLA 306, 80 I.D. 702 (1973); Marcus Rudnick, 8 IBLA 65 (1972); S. V. Wantrup, 5 IBLA 286 (1972). Our position on this issue, moreover, has been sustained by the federal courts in United States v. Wharton, 514 F.2d 406 (9th Cir. 1975), and Day v. Hickel, 481 F.2d 473 (9th Cir. 1973).

Accordingly, we find that the Idaho State Office correctly denied the appellants' Color of Title application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Idaho State Office rejecting the application is affirmed.

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Joan B. Thompson
Administrative Judge

We concur:

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Martin Ritvo
Administrative Judge

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Newton Frishberg
Chief Administrative Judge